



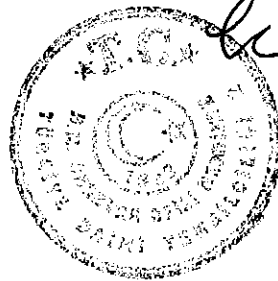
MISSION PERMANENTE DE LA RÉPUBLIQUE DE TURQUIE
AUPRÈS DE L'OFFICE DES NATIONS UNIES À GENÈVE

2018/62441669-BMCO DT/14371166

La Mission Permanente de la République de Turquie auprès de l'Office des Nations Unies à Genève et d'autres organisations internationales en Suisse présentent ses compliments au Haut-Commissariat aux Droits de l'Homme et se référant à la lettre de M. John H. Knox, le Rapporteur Spécial des Nations Unies sur les droits de l'homme et l'environnement, du 2 août 2018, a l'honneur de transmettre ci-jointe, une note d'information rédigée par les autorités compétentes turques en réponse à la demande d'information figurant dans la lettre susmentionnée.

La Mission Permanente de la République de Turquie saisit cette occasion pour renouveler au Haut-Commissariat aux Droits de l'Homme les assurances de sa plus haute considération.

Genève, le 1er octobre 2018



Pièce jointe: comme indiqué.

Haut Commissariat aux Droits de l'Homme
Palais des Nations
1211 Genève 10

**INFORMATION NOTE IN REPLY TO THE COMMUNICATION SENT
BY THE UNITED NATIONS SPECIAL RAPPORTEUR ON THE ISSUE
OF HUMAN RIGHTS OBLIGATIONS RELATING TO THE
ENJOYMENT OF A SAFE, CLEAN, HEALTHY AND SUSTAINABLE
ENVIRONMENT DATED 31 JULY 2018**

1. With reference to the communication dated 31 July 2018, sent by the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, the Government would like to submit its observations herein below.

Artvin's Rich Biological Diversity

2. Artvin Province is home to several of the richest and most diverse ecosystems in Turkey. The province's rich biological diversity is closely monitored. According to a study titled "The Inventory and Monitoring of Artvin's Biological Diversity" carried out by the Ministry of Agriculture and Forestry between 2014-2016, Artvin is home to 3.000 species (2.624 flora and 376 fauna), 228 of which are endemic to the province.

3. As part of the abovementioned study, species in Artvin that are under threat were classified according to the International Union for Conservation of Nature's (IUCN) red list categories and criteria. Species that fall under the categories Critically Endangered (CR), Endangered (EN), and Vulnerable (VU) were designated to be monitored. Monitoring of critically endangered species has already commenced, results of which, along with recommendations from experts on the elimination of designated threats against said species are routinely reported to the Ministry of Agriculture and Forestry.

4. In addition to monitoring activities on species, studies were also carried out on ecosystems. 27 sites including valleys, rivers, national parks, villages, and plateaus have been designated to be monitored. Monitoring activities have started in Fistikli Village and Kamilet Valley, reports on which are routinely communicated to the Ministry of Agriculture and Forestry.

Copper Mine Site in Cerattepe and the Permits Obtained for Operating Thereof

5. Copper mine site in Cerattepe was put out to tender by the General Directorate of Mineral Works on 17.02.2012. Özaltın Construction Inc. won the tender and obtained the operating

license for the copper mine. Later, Artvin Special Provincial Administration issued “Second Class Permit on Opening and Operating a Non-Sanitary Business” (İkinci Sınıf Gayrisihhi İşyeri Açma ve Çalıştırma Ruhsatı) in accordance with the “Regulation Regarding Permits on Opening and Operating a Business” (İş Yeri Açma Ve Çalıştırma Ruhsatlarına İlişkin Yönetmelik)

Environmental Impact Assessment

6. The first application to the Ministry of Environment and Urban Planning (MEUP) for the planned project on the copper and gold mines located in Cerattepe and Genya Mountains in Artvin was made on 15.05.2012 by Özaltın Construction Inc.. In accordance with the steps prescribed in the Regulation on Environmental Impact Assessment (EIA) (Çevresel Etki Değerlendirmesi Yönetmeliği); a “People’s Participation Meeting” (Halkın Katılım Toplantısı) was held on 19.06.2012. (Aforementioned regulation sets forth several steps to be taken in order for the proposed Environmental Impact Assessment to be approved by the MEUP, including a meeting with the people to inform them about the project and obtain their questions, views and recommendations on thereof. Location of this meeting is chosen by the Governor’s Office among central sites where the local population that will be mostly affected by the proposed project can easily reach. Government agencies and other institutions determined by the MEUP and the project owner also attend this meeting. People’s views and recommendations on the project are later presented to the Commission convened to assess the proposed EIA)

7. The relevant EIA was approved by the MEUP on 18.07.2013. However, Rize Administrative Court overruled the project’s approved EIA on 24.12.2014 (Decision number: 2014/747)

8. A new EIA report was drawn up in accordance with the Circular number 2009/7 of MEUP, taking into account the justifications in the Court’s ruling. Said report was presented to the MEUP on 18.03.2015. A significant improvement suggested in the new EIA report was a cable car project that would be utilized for the transportation of ore; thus eliminating the risk of a detrimental effect on the forest ecosystem by harmful gas or dust likely to disperse from ore while it is transported. Cable car project also minimizes the need for building roads or cutting trees in order to expand the existent roads for transporting the ore to the loading station.

9. EIA reports are drawn up based on scientific data and field surveys. Approval or rejection of EIA reports are decided on by a commission composed of representatives from relevant

institutions who are experts on topics presented in the reports.

10. In accordance with Article 12 of the Regulation on EIA, a Review and Assessment Commission (İnceleme ve Değerlendirme Komisyonu) (hereinafter The Commission) was set up on 03.04.2015 in order to examine the abovementioned EIA report. The Commission, composed of representatives from 19 agencies and institutions (Ministry of Energy and Natural Resources, General Directorate of Mineral Research and Exploration, General Directorate of Mineral Works, Ministry of Agriculture and Forestry, Turkish Meteorological Service, General Directorate of Forestry, General Directorate of State Hydraulic Works, General Directorate of Preservation of Nature and National Parks, General Directorate of Water Management, General Directorate of Environment Management, Department of Water and Soil Management, Department of Waste Management, Department of Weather Management, General Directorate of Urban Planning, Artvin Governorate, Artvin Municipality, Artvin Provincial Directorate of Environment and Urban Planning, Artvin Provincial Directorate of Agriculture, Artvin Provincial Directorate of Public Health, Artvin Special Provincial Administration, Artvin Provincial Directorate of Disaster and Emergency Management Authority.) have reviewed and assessed the EIA report and concluded its work.

11. General Directorate of State Hydraulic Works of the Ministry of Agriculture and Forestry, which is the main body responsible for regulation, preservation, and management of fresh water resources of Turkey, have assessed in detail the probable effects of the “Cerattepe Copper Mine, Crushing and Screening Plant and Cable Car Project” on the province’s fresh water resources. Directorate General concluded that the drainage from the adit poses a risk of contamination of the fresh water resources. It approved the EIA report, on the condition that, in addition to compliance with other recommendations, a chemical refinery is built instead of a settling tank proposed in the project, thus eliminating the risk of any drainage contaminating the fresh water.¹

¹ Previously (on 20.06.2014), an EIA report for “Surface Mining Project for Cerattepe Gold Mine” which was presented to MEUP by Özaltın Construction Inc. was also communicated to General Directorate of State Hydraulic Works. General Directorate did not approve the EIA since the project posed a significant threat to underground water sources in Cerattepe (Decision was communicated to MEUP on 01.10.2014). The fact that the General Directorate approved the EIA for the copper mine project while not approving the EIA for the previously presented project on Cerattepe Gold Mine is a clear example of how EIA reports are assessed based on detailed studies and scientific data by experts of their respective fields, and that they are not approved if the proposed project poses a real threat to

12. General Directorate of State Hydraulic Works concluded that the project is not expected to have any detrimental effect on the quality of drinking water resources feeding Artvin since the project's area is outside said resources. However, there is another project, a water transmission line, which aims to carry the drinking water from Hatila Stream. Cable cars will be above the transmission line when both projects are completed. Still, the ore will not contaminate the drinking water running below since it will be transported in the cable cars.

13. General Directorate of Preservation of Nature and National Parks of the Ministry of Agriculture and Forestry, which was also one of the agencies that assessed the proposed EIA report, concluded that the mining site identified in the operating permit and the proposed EIA report is outside the borders of the preserved area which have obtained its status pursuant to the Law on National Parks (Law number: 2873). However, it also concluded that part of the operating site is in the Hatila Stream basin. Therefore, in order to eliminate the risk of the proposed project having a detrimental effect on the Hatila Valley National Park, it approved the EIA report on condition that no waste water is discharged and no waste is dumped from the mining site to any of the side streams feeding the Hatila Stream.

14. The EIA report was reviewed and assessed at the Commission's meetings by representatives from the abovementioned agencies and institutions in line with their scope of authority and the relevant legislation. The finalized EIA report was posted on the hoarding of the Artvin Governor's Office as well as on the MEUP's website between 30.04.2015 and 11.05.2015, in order to once again inform the public about the proposed project and obtain their views and recommendations on thereof. The EIA on the "Cerattepe Copper Mine, Crushing and Screening Plant and Cable Car Project" was approved by MEUP on 02.06.2015 in accordance with Article 14 of the Regulation on EIA.

Transfer of Planned Mining Operations and the Lawsuit Against Approved EIA

15. Having obtained the operating permit by the General Directorate of Mineral Works, second class Permit on Opening and Operating a Non-Sanitary Business by the Artvin Special Provincial Administration, and the approved EIA report by the MEUP; Özaltın Construction
natural sources or ecosystems.

Inc. transferred all of the aforementioned documents along with all operations on the copper mine to Etibakır Inc. in accordance with a royalty contract (rödövens sözleşmesi) and a transfer agreement between the two companies. The mining site was handed over to Etibakır Inc. on 25.06.2015 by the Directorate on Forest Management (Orman İşletme Müdürlüğü) pursuant to the aforementioned permits.

Protests Against the Mining Project

16. A lawsuit was lodged before Rize Administrative Court against MEUP, requesting a stay of execution for and the cancellation of the approval of the EIA. The Court dismissed the case on 20.09.2016 (Judgement number: 2016/485). The plaintiffs appealed against the verdict, again, along with the request of stay of execution. 14. Chamber of the Council of State dismissed the request on 26.01.2017 (Judgement number 2016/11573).

17. On 16.02.2016, around 700-800 hundred protestors (200 vehicle convoy) proceeded to a location known as Atmaca close to Cerattepe, and closed off the road. Engineering vehicles trying to reach the mining site were therefore unable to go forward. The vehicles were accompanied by security forces (police and gendarme) since protests were estimated to take place before the mining operations commenced. Protestors refused to disperse and take down the barricade despite all warnings. The police, therefore, had to resort to tear gas. The vehicles blocking the road were cleared out and legal action was taken against 7 people in accordance with Law on Meetings and Demonstration Marches (Law number 2911).

18. On 17.02.2016, 18 vehicle owners were issued traffic penalty tickets in accordance with the Law on Traffic (Law number 2918). After the vehicles were cleared out, around 200 protestors blocked the road with engineering vehicles. Another barricade was also set up by 100 protestors. Legal action was taken against 6 people who refused to step down despite all warnings in accordance with Law number 2911. 2 molotov cocktails were thrown by the protestors while the security forces tried to clear out the 10 km road from Katrevan to Cerattepe Mining Site.

19. A press release was read out in front of the Artvin Governorate after a sit-down strike of 1200 people. The group later dispersed without any intervention by the police.

20. On 18.02.2016, around 5000 people marched from Bibak Intersection to protest the mining

project. The protestors dispersed after the march without any intervention by the police.

21. Like all law enforcement agencies operating under the principle of rule of law, the trained personnel of the Turkish Police Department uses tear gas (based on orders of competent superior) as a last resort in protests that are illegal or later becomes illegal, in accordance with the principle of proportional use of force and based on legal authority, in order to disperse protestors that refuse to do so despite all warnings, apprehend suspects, or prevent any possible attack on peaceful protestors or civilians nearby. Tear gas is prescribed among instruments that can be utilized by the police in the Law on Duties and Authority of Police (Law Number 2559).

22. On 16.02.2016, protestors who deliberately closed off public roads in order to prevent the engineering vehicles from reaching the mining site and refused to step down despite all warnings, started throwing rocks, clubs and bottles at the police while the security forces were trying to clear off the vehicles blocking the road. Several police officers were wounded as a result of these attacks. The police, therefore, in accordance with the principle of proportional use of force, had to resort to tear gas in order to restore the public order and protect other citizen's rights and freedoms.

23. There are no rubber bullets and no arms that use rubber bullets in the security forces' inventory (neither the Police Department nor the Gendarmerie). Therefore it is impossible for rubber bullets to have been used in any protest in Turkey.

24. The protests that took place on 16.02.2016 and 17.02.2016 against the mining project were far from peaceful. Public roads were blocked, hindering other citizens from using thereof, police officers were injured by clubs, rocks, and bottles, and molotov cocktails were used (there are several photos showing protestors throwing said objects at the police officers). The police, therefore, interfered (gradually and only to the extent of restraining the resistance it is faced with) in accordance with Article 16 of the Law Number 2559.

25. As mentioned in paragraphs 19 and 20, the police did not interfere in cases where the protestors demonstrated peacefully. It only interfered when the protests took a violent form and hindered the rights and freedoms of other citizens.

Complaints Against the Police and the Gendarme and other Public Officials

26. 693 protestors filed complaints at Artvin Chief Public Prosecutor's Office, claiming that the orders of the Artvin Governor to the police to interfere in the protests were unlawful, and that the police officers acted based on an unlawful order on 16.02.2016.

27. According to the Law on Legal Proceedings Against Civil Servants and Other Public Officials (Law Number 4483), for civil servants and other public officials to be prosecuted for the actions they have carried out based on their official capacity (excluding disciplinary proceedings and actions that amount to serious offences), consent of the relevant authority is needed. For civil servants that work in a province, the relevant authority is the governor of the respective province, and for governors it is the President or the Minister of Interior Affairs (at the time, the relevant authority was Prime Minister or the Minister of the Interior Affairs since the events took place before the Presidential System became operational in July 2018).

28. All actions of the security forces against the protests that took place on 16.02.2016 and 17.02.2016 were carried out based on their official capacity. Chief Public Prosecutor, therefore, referred to the Artvin Governorship to obtain a written consent in order to carry out the prosecution against the police officers that interfered in the protests, as well as the chief of police and chief of gendarmerie of Artvin. It also referred to the Ministry of the Interior in order to carry out the prosecution against the Governor of Artvin. Artvin Governorship, with its decision number 2018/5 dated 26.02.2018, and the Ministry of the Interior with its decision dated 19.03.2018, concluded that the use of force by public officials on 16.02.2016 was lawful, restrained, necessary and proportional and therefore did not give the consent for prosecution for the Governor, chief of police and chief of gendarmerie of Artvin, and other public officials (police and gendarme) that interfered in the protests. The decisions were finalized since neither the Chief Public Prosecutor nor the complainants objected thereof.

29. Unable to obtain any written consent from the relevant authorities to carry out the prosecution, Chief Public Prosecutor's Office, in accordance with Articles 3 and 4 of the Law Number 4483 and the case law of the Court of Cassation (Verdicts number 2003/8042 dated 11.06.2003 and 2006/10703 dated 10.05.2006 of the 4th Criminal Chamber), gave its decision to not further investigate the case on 07.08.2018 ("İnceleme Yapılmasına Gerek Olmadığı" Kararı).

Other Allegations Communicated to the Special Rapporteur

30. General Directorate of Forestry the Ministry of Agriculture and Forestry communicated that mining operations in Cerattepe have commenced in accordance with relevant licenses and permits and in pursuant to Article 16 of the Law on Forests (Law Number 6831), and that, contrary to allegations, there is no plan to cut down 50.000 trees.

31. The report of a group of 30 media representatives who visited Cerattepe region in August 2017 which specifies that the water resources that provide Artvin's drinking water were polluted and that the excavated soil from the mine tunnel was carried on by the wind to the forested land is considered far from scientific since such observations can only be made and reported by experts of their respective fields and journalists naturally do not have professional training or expertise to report on mining projects or the pollution levels of water resources. No applications or complaints were communicated to the Ministry of Agriculture and Forestry by the local population regarding the alleged pollution.

Conclusion

32. In light of all of the explanations above, it is believed that the allegations communicated to the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment are unfounded and misleading.